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DATE: October 6, 2003

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RE: LARA

MESSAGE:

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OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

October 6, 2003

Elliot Block, Esq.
Staff Counsel
California Integrated
Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025

Dear Mr. Block:

Thank you for your letter dated September 22, 2003, asking for clarification of several procedural and administrative matters regarding the proposed Los Angeles Area Regional Agency (LARA). This letter will serve as additional clarification of the issues raised and provide assistance in understanding the proposed structure. I appreciate receiving these issues in writing to be able to respond fully.

Is the LARA's Joint Powers Agreement currently in effect or not?

Each city in the proposed Regional Agency has taken a City Council action to approve the Joint Powers Agreement. The date of their approval is varied; each city acted independently and with staff reports, testimony, and other information so as to be fully informed of the process. The effective date of the agreement was not filled in as it is not known; the Authority proposed in the CIWMB agenda item becomes effective on the date of the approval of the CIWMB. The consortium of cities proposed for LARA have each agreed to be in the Regional Agency when it is approved. No fees have been collected from the proposed members and no actions have been taken by the appointed Board of the Agency. Once the LARA is approved by the CIWMB, the JPA will be activated to allow the member cities to implement and carry out the purpose of the LARA.

Upon approval by the CIWMB as a Regional Agency, the next agenda item would be to place all of LARA under a Compliance Order, which all cities fully understand and agree on, to transfer jurisdiction as explained in the July CIWMB Agenda Item. It is the same procedure for the effective date of the JPA. Upon approval of the CIWMB, the agreed upon members become both a JPA and a Regional Agency. The City of Los Angeles has acted as lead for the formation and approval process, with the consent of the cities who have all agreed to form the JPA once LARA is approved by the CIWMB.



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If the LARA's Joint Powers Agreement is not currently in effect, the CIWMB will need to comply with specified conferring and notice requirements with respect to each member for the issuance of Compliance Orders unless waivers can be provided. Can waivers be provided?

Regarding notification of the pending Compliance Order to the proposed LARA cities, staff received a letter dated March 5, 2003, notifying us that LARA would receive a Compliance Order on the same date as the CIWMB approval. On March 10, Los Angeles sent an E-mail to CIWMB staff offering to explore asking LARA cities to waive the notification period. A meeting was called with the proposed LARA cities on March 20, 2003, to discuss the issues raised in the letter. City staff also spoke to the majority of the proposed LARA members by phone to get their input on the compliance order issue. After the meeting of the proposed LARA members, a response was circulated to the members for comments and then sent to the CIWMB, with a copy to all proposed LARA members. The proposed LARA members are fully aware of the Compliance Order and they have all agreed to accept the Compliance Order when transferred to LARA by an action of the CIWMB. However, if you would also like notice waivers to be signed by the individual member cities, please provide language or a form as soon as possible so as not to delay this item further.

If the LARA is currently in effect, is there an amendment to the Joint Powers Agreement that has not yet been provided to the CIWMB?

LARA is not in effect UNTIL it is approved by the CIWMB. The JPA submitted to the CIWMB for approval, with the exception of the list of proposed members, which was requested by you and CIWMB staff, is the applicable JPA document approved by all the participating cities.

Alternatively, are you considering the letters of clarification from a majority of the members of the LARA to constitute an amendment to the Joint Powers Agreement?

The JPA remains as submitted to the CIWMB. The clarification letters submitted to you by the proposed LARA members are just that, a clarification, to assure you and staff of the intent of the cities who have approved the JPA.

If you consider these letters to be amendments to the Joint Powers Agreement, is there a potential problem given that the letters are not from the respective City Councils of the members?

The JPA has NOT been amended by the letters of clarification. The JPA submitted to the CIWMB for approval is the applicable JPA document approved by all the participating cities.

Is there a difference in the process between amending the Joint Powers Authority and terminating a member?

The JPA is merely an agreement between the potential LARA member cities to work together. Not all of the processes are, or should be, fully described in this document. The cities that signed the JPA wanted the ability to remove a member if necessary. The complete process will be fully set forth in the by-laws adopted by the LARA Board. The section in the JPA describing the amendment process is fairly standard language included in most Joint Powers Agreements.

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Obviously, the process to remove a member of the JPA, which will be set forth in the bylaws, is different than the process to amend the JPA, which is set forth in the JPA itself. Members of the JPA and LARA are free to leave the group whenever they believe that the JPA and LARA are no longer acting in their best interest.

If you consider the letters of clarification to be amendments to the Joint Powers Agreements, is this process to amend the agreement only available until the CIWMB approves the LARA, or would it continue afterwards?

To answer the stated question, there always exists, with every JPA, the possibility of amendment in the future, all it takes is an agreement by the members of the JPA to amend it. In reality, a JPA, or any other agreement between cities, can only exist if all the parties are satisfied with its creation and operation. If the JPA is not meeting the needs of its members, the JPA, or any organization for that matter, will fall apart.

To respond to the comments below the question, the Joint Powers Agreement was reviewed by you and CIWMB staff on several occasions and found to meet the statutory requirements for a Regional Agency. For example, attached is an E-mail from you to Karen Coca in which you give specific comments, which were all incorporated into the JPA before its circulation for review by the potential member cities. Additionally, in the staff report for the July CIWMB meeting, it is stated that *"The agreement between the fifteen participating Cities is both a JPA and a Regional Agency formation agreement, and was reviewed by Board staff and legal counsel and found to be complete."* At no time during the review period, or in subsequent discussions, did you or staff mention including Compliance Order or Plan of Correction information in the JPA. From the very beginning you and staff knew or should have known that there were proposed member cities in the JPA and LARA who already had been issued a Compliance Order by the CIWMB. Since the formation of LARA was specifically targeting cities in Los Angeles County, it was reasonable for CIWMB staff to have foreseen the membership in LARA of one or more of the four cities currently under compliance orders from the CIWMB in LARA.

How do the draft by-laws impact the Joint Powers Agreement?

Staff provided you with the draft by-laws for information purposes. The JPA itself only provides a skeletal structure for the relationship between the member cities (analogues to a city's charter) and the by-laws (analogues to a city's municipal and administrative codes) will provide the actual operating procedures for the Agency. As indicated in an E-mail from staff to you on August 4, 2003, the by-laws will not be finalized or adopted until after LARA exists as a Regional Agency and the appointed Board can take the action necessary to approve the by-laws. The by-laws adopted by the LARA Board can not, and will not, "conflict" with the JPA. However, if there are additional procedural requirements or other information that you believe will enhance LARA's ability to meet the requirements of AB939, on behalf of its members, we will be happy to consider any such suggestions.

Staff has contacted the City of Gardena regarding a letter or other written communication regarding their delayed participation in LARA and we do not anticipate receiving such a letter at this time. However, the City of Gardena does understand that initially it will not be included as a member of LARA in the agenda item that is anticipated to be before the CIWMB at its next meeting. This is a decision that has been made by the other enumerated proposed members of

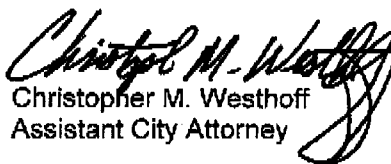
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LARA. The opportunity to join the Agency will be available to Gardena after they have satisfactorily implemented their waste diversion programs. Other non-member cities will also have the option of seeking participation in LARA in the future.

On behalf of the proposed member cities of the Agency I most strongly urge you to insure that this matter is placed on the very next CIWMB agenda. Our members have waited long enough. This matter needs to go forward so our Agency can be formalized and its member cities be allowed to avail themselves of their legal right to meet their AB 939 obligations according to applicable state law.

If you have any questions or require additional information, please call me at (213) 978-8159.

Sincerely,


Christopher M. Westhoff
Assistant City Attorney

CMW:lee

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Karen Coca - RE: JPA

From: "Block, Elliot" <eblock@CIWMB.ca.gov>
To: "ETseng@aol.com" <ETseng@aol.com>
Date: 11/27/2001 2:57 PM
Subject: RE: JPA
CC: "KACoca@san.lacity.org" <KACoca@san.lacity.org>

Okay - As I mentioned to Karen when I skimmed this at the Board meeting - it looks good - pretty simple and straightforward - I just have a few minor comments and legaleze that will have to get added by the city attorney - so you may as well add them now.

When I review these, I look at two things - compliance with the Govt Code JPA requirements and compliance with the PRC Regional Agency requirements

The PRC requirements look like they're all covered to me - but I wanted to mention two things I saw in the draft that I have:

section 8 - contingency - doesn't explicitly mention that the jurisdictions will have to do their own programs too - I'm assuming because that's what they are required to do anyway under section 5 - you just may want to think about adding a couple of words to this section to make sure that all of the members get it - it's approvable without that - just thinking about how this might get read by someone else

section 10 - amendments - my draft is missing the last part of the sentence - which looks like it'd be majority/majority, but the sentence isn't finished

Govt Code requirements - since the authority will handle money - it'll have to comply with the following sections, you can do these in a number of ways - some like to explicitly use the relevant language from these sections, some like to simply say that they'll comply with the applicable financial accounting requirements set forth in sections, your choice on how to incorporate them into the agreement. That's it - the rest looks fine:

6505. (a) The agreement shall provide for strict accountability of all funds and report of all receipts and disbursements.

(b) In addition, and provided a separate agency or entity is created, the public officer performing the functions of auditor or controller as determined pursuant to Section 6505.5, shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every agency or entity, except that the officer need not make or contract for the audit in any case where an annual audit of the accounts and records of the agency or entity by a certified public accountant or public accountant is otherwise made by any agency of the state or the United States only as to those accounts and records which are directly subject to such a federal or state audit. In each case the minimum requirements of the audit shall be those prescribed by the Controller for special districts under Section 26909 and shall conform to generally accepted auditing standards.

(c) When an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each of the contracting parties to the agreement and also with the county auditor of the county where the

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home office of the joint powers authority is located and shall be sent to any public agency or person in California that submits a written request to the joint powers authority. The report shall be filed within 12 months of the end of the fiscal year or years under examination.

(d) When a nonprofit corporation is designated by the agreement to administer or execute the agreement and no public officer is required to perform the functions of auditor or controller as determined pursuant to Section 6505.5, an audit of the accounts and records of the agreement shall be made at least once each year by a certified public accountant or public accountant, and a report thereof shall be filed as a public record with each of the contracting parties to the agreement and with the county auditor of the county where the home office of the joint powers authority is located, and shall be sent to any public agency or person in California that submits a written request to the joint powers authority. These reports shall be filed within 12 months after the end of the fiscal year or years under examination.

(e) Any costs of the audit, including contracts with, or employment of certified public accountants or public accountants, in making an audit pursuant to this section shall be borne by the agency or entity and shall be a charge against any unencumbered funds of the agency or entity available for the purpose.

(f) All agencies or entities may, by unanimous request of the governing body thereof, replace the annual special audit with an audit covering a two-year period.

(g) Notwithstanding the foregoing provisions of this section to the contrary, agencies or entities shall be exempt from the requirement of an annual audit if the financial statements are audited by the Controller to satisfy federal audit requirements.

6505.1. The contracting parties to an agreement made pursuant to this chapter shall designate the public office or officers or person or persons who have charge of, handle, or have access to any property of the agency or entity and shall require such public officer or officers or person or persons to file an official bond in an amount to be fixed by the contracting parties.

6505.5. If a separate agency or entity is created by the agreement, the agreement shall designate the treasurer of one of the contracting parties, or in lieu thereof, the county treasurer of a county in which one of the contracting parties is situated, or a certified public accountant to be the depository and have custody of all the money of the agency or entity, from whatever source.

The treasurer or certified public accountant so designated shall do all of the following:

(a) Receive and receipt for all money of the agency or entity and place it in the treasury of the treasurer so designated to the credit

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of the agency or entity.

(b) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all agency or entity money so held by him or her.

(c) Pay, when due, out of money of the agency or entity held by him or her, all sums payable on outstanding bonds and coupons of the agency or entity.

(d) Pay any other sums due from the agency or entity from agency or entity money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement.

(e) Verify and report in writing on the first day of July, October, January, and April of each year to the agency or entity and to the contracting parties to the agreement the amount of money he or she holds for the agency or entity, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

The officer performing the functions of auditor or controller shall be of the same public agency as the treasurer designated as depository pursuant to this section. However, where a certified public accountant has been designated as treasurer of the entity, the auditor of one of the contracting parties or of a county in which one of the contracting parties is located shall be designated as auditor of the entity. The auditor shall draw warrants to pay demands against the agency or entity when the demands have been approved by any person authorized to so approve in the agreement creating the agency or entity.

The governing body of the same public entity as the treasurer and auditor specified pursuant to this section shall determine charges to be made against the agency or entity for the services of the treasurer and auditor. However, where a certified public accountant has been designated as treasurer, the governing body of the same public entity as the auditor specified pursuant to this section shall determine charges to be made against the agency or entity for the services of the auditor.

6505.6. In lieu of the designation of a treasurer and auditor as set forth in Section 6505.5, the agency or entity may appoint one of its officers or employees to either or both of such positions. Such offices may be held by separate officers or employees or combined and held by one officer or employee. Such person or persons shall comply with the duties and responsibilities of the office or offices as set forth in subdivisions (a) to (d), inclusive, of Section 6505.5.

In the event the agency or entity designates its officers or employees to fill the functions of treasurer or auditor, or both, pursuant to this section, such officers or employees shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505.

6511. The agreement shall provide for the disposition, division, or

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distribution of any property acquired as the result of the joint exercise of powers.

6512. The agreement shall provide that after the completion of its purpose, any surplus money on hand shall be returned in proportion to the contributions made.

-----Original Message-----

From: ETseng@aol.com [mailto:ETseng@aol.com]

Sent: Tuesday, November 27, 2001 1:31 PM

To: Block, Elliot

Subject: JPA

Hi Elliot,

Please send comments on the Draft JPA for Los Angeles (City). Karen asked about it.

Thanks

Eugene